

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

U.S. ENERGY SCIENCES, INC., et
al.,

Plaintiffs,

v.

STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY,

Defendant.

CV 616-042

O R D E R


Presently before the Court is Plaintiffs' Dismissal With Prejudice. (Doc. 28.) The Court must deny Plaintiffs' attempt to voluntarily dismiss because it does not comply with Rule 41(a) of the Federal Rules of Civil Procedure.

Rule 41(a) provides two paths by which a plaintiff may voluntarily dismiss an action: with a court order (41(a)(1)) or without a court order (41(a)(2)). If a plaintiff wishes to dismiss the action without a court order, she must file either "(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(emphasis added). If a plaintiff wishes to voluntarily dismiss an action otherwise, she

must request a court order using Rule 41(a)(2). Under Rule 41(a)(2), a court may dismiss an action "on terms that the court considers proper."

Plaintiffs may not voluntarily dismiss this action pursuant to 41(a)(1) because Defendant has already answered Plaintiffs' complaint and Plaintiffs have not filed a stipulation of dismissal signed by all parties. Neither may they dismiss under 41(a)(2), because they have not requested dismissal pursuant to 41(a)(1) and thus not put Defendant on proper notice of the grounds for their request. See Fed. R. Civ. P. 7(B)(1). Thus, Plaintiffs' attempt to voluntarily dismiss (doc. 10) is **DENIED WITHOUT PREJUDICE** for failure to comply with Rule 41 (a).

ORDER ENTERED at Augusta, Georgia, this 6th day of January, 2017.


HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA